

(3)
No. 86-1028

Supreme Court, U.S.

FILED

JAN 29 1987

**JOSEPH F. SPANIOL, JR.
CLERK**

IN THE
Supreme Court of the United States
OCTOBER TERM, 1986

ROYAL NETHERLANDS STEAMSHIP COMPANY,

Petitioner,

—against—

ELIDA QUINTO de GARCIA,

Respondent.

**REPLY BRIEF IN SUPPORT OF
PETITION FOR A WRIT OF CERTIORARI TO THE
FLORIDA THIRD DISTRICT COURT OF APPEAL**

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**REPLY BRIEF IN SUPPORT OF
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Respondent evades addressing the important substantive question presented by petitioner, of whether there is a remedy under United States general maritime law for tortious deaths in foreign territorial waters, by submitting a diversionary, distorted procedural question, of whether the Florida motion judge abused his discretion by sanctioning petitioner, which patently does not merit the Court's attention.

A cursory reading of the Florida appeal court's opinion indisputably confirms that the sanction imposed was "personal" jurisdiction (pet. 3a), not "subject matter" jurisdiction which, as stated in *Insurance Corp. v. Compagnie des Bauxites*, 456 U.S. 694 (1982), cited in the Florida court's opinion (*ib.*) and heavily relied upon by respondent: "no action of the parties can confer"; "principles of estoppel do not apply"; and "even an appellate court may review *sua sponte*," 456 U.S., pp. 702, 704.

Respondent jumbles stale issues of forum non conveniens and choice of laws, which petitioner does not seek to revive. On the contrary, the petition stresses that respondent sued "for wrongful death damages solely under United States general maritime law (2a, 6a, 8a, 10a)." (pet. 4); hence the question presented of whether there is a remedy under that law for death in foreign waters.

If, as respondent seemingly infers (brief 10, ¶ B), the Florida appeal court affirmatively answered that question by misapplying Florida substantive law under the "saving to suitors" provision, 28 U.S.C. § 1333(1), then the decision directly conflicts with numerous decisions by this Court, federal courts of appeals, and state courts of last resort, that substantive

issues in state court "saving to suitors" litigation are governed by federal maritime law.¹

Respondent has not suggested any valid reason why the petition should not be granted.

Respectfully submitted,

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January 28, 1987.

¹ *Chelentis v. Luckenbach S.S. Co.*, 247 U.S. 372, 383-384 (1918); *Offshore Logistics, Inc. v. Tallentire*, ____ U.S. ____, 106 S.Ct. 2485, 2495 (1986); *Jansson v. Swedish American Line*, 185 F. 2d 212, 216 (1 Cir., 1950); *Igneri v. Cie de Transports Oceaniques*, 323 F. 2d 257, 259 (2 Cir., 1963), *cert. den.* 376 U.S. 949 (1964); *Celeste v. Prudential-Grace Lines*, 35 N.Y. 2d 60, 62-63 (1974); *Lavergne v. Western Co. of North America, Inc.*, 371 So. 2d 807, 809 (La., 1979).

